

**DIVISION CIRCULAR #33  
(N/A)**

**DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DATE:**           **October 11, 2004**

**DATE ISSUED:**             **October 5, 2004**

**(Rescinds Division Circular #33, Self-Determination, issued on October 23, 2001)**

- I.     TITLE:**       **Self-Determination**
- II.    PURPOSE:** To delineate the steps to be taken to review, and approve individualized Self-Determination plans for individuals participating in a process which will allow the individual to design supports to specifically meet his or her needs.
- III.   SCOPE:**    The Self-Determination pilot program began in New Jersey in Fiscal Year 1997 as an adjunct to the Community Services Waiting List and was formerly known as the Governor's Inclusion Initiative. Self-Determination was offered to individuals with urgent status on the Community Services Waiting List from July 1997 until February 2003.  
  
**Self-Determination is limited to the participants who had approved plans prior to February 20, 2003 and those individuals who had completed a written application for participation in the Self-determination prior to February 20, 2003.**

This procedure applies to all division components.  
This circular shall apply to all applications at the time the circular becomes effective.

#### IV. POLICIES:

- A. Individuals with developmental disabilities have the same right to determine their quality of life as any other person. Under Self-Determination, individuals with developmental disabilities, together with their guardians, families and friends, can choose their own supports and design new, innovative, cost-effective living arrangements.
- B. Residential placements are subject to Division Circular #12, "Placement". Self-Determination is not a residential placement. It is an alternative to a residential placement.
- C. The availability of funds for Self-Determination shall be limited to the Division's funding in a given fiscal year and the fiscal policies and procedures governing the administration of these funds.
- D. There is no direct cash award sent to the individual. The Fiscal Intermediary will make payment for all supports listed in the approved budget to be funded by the Division.
- E. The Division shall annually establish allowable cost guidelines for Division funds for specific expenses.
- F. The Division shall not be responsible for any debt incurred, i.e. credit card debt, contract entered or monies expended beyond the budget approved by the Division pursuant to this circular.
- G. If the individual or his or her legal guardian or Support Broker spends more than the amount funded by the Division in the approved budget, a meeting will be required to review the circumstances and develop a plan of action to balance the budget.
- H. Self-Determination budgets include residential supports, therefore, participants shall not be eligible for family support under N.J.A.C. 10:46A (Division Circular 39).
- I. For persons participating in Self-Determination, the individual or his or her legal guardian shall not be assessed to contribute to the cost of his or her care and maintenance under N.J.A.C. 10:46 because the individual or his or her legal guardian is contributing resources directly to the Self-Determination plan. Because Self-Determination is an alternative to residential placement and other services, different

guidelines for contributions by the individual or his or her legal guardian apply. Instead, the individual or his or her legal guardian shall make available all current benefits for which he or she may be eligible including but not limited to Medicare, Medicaid, State and Federal benefits and any third party support pursuant to statute, rule, order or by contract as well as any personal resources from wages, investments or other sources.

- J. Once a plan is approved and funded, the individual shall be removed from the community services residential waiting list. The individual shall not retain his or her original waiting list date.
- K. If an individual becomes homeless or is in imminent peril, an emergency placement shall be offered in accordance with N.J.A.C. 10:46B-3.3. If, for any reason, the individual cannot continue in Self-Determination, the Division shall utilize its resources to assist the individual in transferring to a placement as defined in N.J.A.C. 10:46B.
- L. Each individual shall have a case manager assigned by the Division who shall visit and monitor the supports at least quarterly when the individual lives with his/her family. The case manager shall monitor the supports monthly in all other situations as identified in the Self-Determination plan. The case manager shall ensure that an IHP is developed and reviewed annually.
- M. Limits to Participation

- 1. Self-Determination plans shall not be used for the following:
  - a. Residing outside the State of New Jersey.
  - b. Purchase of a residential placement from a community provider licensed under N.J.A.C. 10:44A, N.J.A.C. 10:44B and N.J.A.C. 10:44C.
  - c. Purchase of a placement at a private residential facility licensed in or outside the State of New Jersey.
  - d. Purchase of invasive medical procedures, treatments or care relating to them.
  - e. Purchase of a public or private day program in or outside the State of New Jersey.
  - f. Payment for services to self, parent, spouse or legal guardian.

- g. Purchase of a vehicle with Division funds.
  - h. Purchase of services available through other State or Federal programs.
  - i. Acquisition of a down payment on and/or financing of a home to be used by the individual with Division funds from conventional mortgage lenders. The Division will consider the use of Division funds for the purpose of financing a home to be used by the individual through the New Jersey Housing and Finance agency (HMFA).
- 2. For individuals under 18 years of age, the parents shall be responsible for all supports usually provided to a child including but not limited to: room and board, recreation and leisure activities, clothing and medical care. In addition, the child must live in the home of his/her parents or legal guardian. However, the child may participate in Self-Determination as follows:
  - a. The Division may provide supports through Self-Determination for the special needs of the child related to his/her developmental disability.
  - b. The Division shall not pay for services available through other State or Federal programs including but not limited to Special Child Health Services, the Catastrophic Illness In Children Relief Fund Commission, or Educational Services.
- 3. In addition to the limitations to participation, Self-Determination plans may be disapproved for any of the following reasons:
  - a. Insufficient information;
  - b. Failure to disclose applicant's financial information;
  - c. If the individual or his or her legal guardian is not willing to contribute his or her own resources;
  - d. Any cost which the Division deems to be unreasonable;

- e. Health and safety issues are either not identified in the Self-Determination plan or are identified but have not been addressed adequately by the Self-Determination plan;
- f. Individual is not able to self-direct the plan and there is no legal guardian or relative capable of assuming this role;
- g. The Self-Determination plan presents a clear risk or danger to the health, safety and welfare of the individual.
- h. Services are recommended from an agency who employs the Support Broker;
- i. The Direct Support Professional does not meet the criteria set forth in Section VIII of this circular; or
- j. The information was not submitted on the forms required by the Division.

## **V. GENERAL STANDARDS:**

- A. Definitions: the following terms shall have the meanings contained herein:

Budget means the individual's budget, listing each support, cost and provider, accompanied by a narrative, which provides detailed information and justification for each service.

Case management means the linking and coordination of services across family, agency and professional lines to develop and attain goals and objectives embodied in the Individual Habilitation Plan. In the case of Self-Determination, the case manager is responsible to ensure that an annual Individual Habilitation Plan is developed as well as to review, approve and monitor the plan to ensure its implementation.

Central Office Coordinator means the person designated by the Division Director to perform central office activities including dissemination of information to the regions. He or she will work with

the Regional Self-Determination Coordinators to answer policy questions and to identify issues for the Division Director.

Community Care Waiver means a program which allows the Division to claim reimbursement for a portion of the cost of residential, day program, and some related services when they are provided to a person who is eligible for Division services and is also Medicaid eligible. The services must be provided in conjunction with the individual's IHP.

Direct Support Professional is an Individual Assistant who is at least 18 years old, hired by the individual to perform certain daily tasks for the individual with a developmental disability and must meet the criteria established in Section VIII of this circular.

Division means the Division of Developmental Disabilities.

The Elizabeth M. Boggs Center on Developmental Disabilities (The Boggs Center) is the agency federally designated by the administration on Developmental Disabilities of the Administration for Children and Families, U.S. Department of Health and Human Services. The Boggs Center promotes a community based, capacity-building approach to the delivery of health care and community supports for people with developmental disabilities.

Fiscal Intermediary means an individual or agency contracted by the Division to manage the individual's budget and pay vendors, support providers and the Support Broker and act as employer of record for Direct Support Professionals not affiliated with an agency.

Interdisciplinary Team (IDT) means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the person receiving services, the legal guardian, the parents or family member (if the adult desires that the parent or family member be present), those persons who work most directly with the individual served, and professionals and representatives of service areas who are relevant to the identification of the individual's needs and the design and evaluation of programs to meet them.

New Jersey Council on Developmental Disabilities means the federally mandated state planning and advisory board composed of members appointed by the Governor.

New Jersey Housing, Mortgage Finance Agency (HMFA) is the state agency responsible for educating citizens and making homeownership and housing opportunities available to New Jersey residents in order to improve their living conditions and other quality of life issues.

“Parent” means the natural, adoptive or step-parent of a child.

Protected Health Information means individually identifiable health information created or received by the Division which is transmitted or maintained by electronic media or transmitted or maintained in any other form or medium. PHI includes oral, written or electronic information.

Regional Assistant Director (RAD) means the Division staff member with administrative authority over community services regional offices and the assigned developmental center(s).

Regional Self-Determination Coordinator (RSDC) means the Division staff in each community services regional office responsible for coordinating all activities relating to Self-Determination for the region. The RSDC facilitates communication through the individual, his or her broker, the Fiscal Intermediary and the Division including the assigned Division case manager. The RSDC also arranges the review committee for the region, assists with negotiations of the budget on behalf of the Division and submits to the RAD for final approval the recommended budget after receipt from the Support Broker.

Self-Determination Plan means the documents required by the Division in order to approve an individual to participate in Self-Determination. For individuals participating in Self-Determination, the plan shall be considered the Individual Habilitation Plan (IHP) as required by N.J.S.A. 30:6D-10. These documents include but are not limited to:

- Outcome forms
- Plan signature page
- Resource form
- Full financial disclosure
- Line item budget
- Budget narrative and budget justification
- Budget sign off sheet
- New Support Broker contract
- Community Care Waiver sign off form

Self-Determination means a service delivery system which allows an individual with developmental disabilities, in conjunction with his or her legal guardian, if any, family and selected friends to identify appropriate services and supports and determine how an individual budget, as well as personal, family and community resources, can be used to develop a service plan. Self-Determination is based upon the principles of freedom to plan one's own life, authority to utilize and manage resources, build one's own support system and responsibility to contribute back to the community and the appropriate stewardship of public funds.

Support Broker means a person or agency hired by the individual, his or her legal guardian or family to assist in preparing a Self-Determination plan and budget of supports and resources and to assist in the coordination of supports. The Support Broker shall assist the individual, his or her legal guardian and/or family in obtaining all approved supports and resources. The individual shall not be an employee of the Department of Human Services and shall meet the requirements set forth in Section VII of this circular. The individual, parent, spouse or the legal guardian of the individual can act as an unpaid support broker.

Support Circle means those persons chosen by an individual and family to assist in mapping out the desired future of the individual, identifying the supports necessary for that desired outcome and working to develop those supports. The members of the support circle may provide some of the supports identified for the individual.

- B. In an effort to provide fairly for all individuals served, it is recognized that Division appropriations for Self-Determination need to be applied across the State and across the entire fiscal year. Furthermore, planning and judgment are necessary and appropriate on a case-by-case basis to ensure that appropriations are not dissipated in an effort to meet the extraordinary needs of one individual to the detriment of the rest of the population who could benefit from Self-Determination.
- C. All fiscal resources available to the individual shall be disclosed to the Division and considered in developing the Self-Determination plan.
- D. The Division recommends but does not require the use of a support circle in developing the Self-Determination plan.



- E. The Division shall evaluate the implementation and operation of the Self-Determination plan. Failure of an individual or his or her legal guardian to comply with the Self-Determination plan or failure to use funds in the manner provided in the Self-Determination plan may result in the termination of the individual's funding from DDD for participation in Self-Determination.

## **VI. PROCEDURES**

### **A. Support Broker Services**

1. A list of Support Brokers is available from the Boggs Center and is included in the information package provided by the Division.
2. When hiring a Support Broker, the individual or his or her legal guardian must sign a written agreement with the Support Broker outlining the duties the Support Broker will perform and the rate of pay. The Division shall provide funds for Support Broker services only after receipt of the written agreement.
3. The Support Broker shall not receive more compensation than the annual limit established by the Division Director. A Support Broker shall be paid once a month for services rendered during the previous month.
4. A copy of the written agreement shall be sent to the RSDC for review to ensure compliance with this section of the circular.
5. The services of the Support Broker may be terminated immediately for cause, i.e. abuse, neglect, breach of confidentiality.
6. A Support Broker shall be self-employed or shall be employed by an agency that serves as the employer of record. In addition, the Support Broker shall:
  - a. Be 18 years or older;
  - b. Have the ability to read and write English sufficiently to perform the duties of the Support Broker as defined by the terms of the agreement between the individual and the Support Broker;

- c. Have a demonstrated ability to perform the functions of the job as determined by the hiring individual or legal guardian. Services to be performed are reflected in the individualized written agreement for service;
  - d. Have at least one year of experience working with, for, or on behalf of individuals with a developmental disability;
  - e. Complete an orientation and ongoing education for Support Brokers, approved by the Division;
  - f. Serve at the will of the individual or legal guardian. The services of the Support Broker may be terminated with 30 days notice by either party;
  - g. Not be an employee of the Division or of the Department of Human Services;
  - h. Not be a Division case manager. Agencies under contract with the Division to provide case management services may not provide Support Broker services to the same individuals;
  - i. Not be a person receiving services from the Division. The individual or his or her legal guardian may choose to develop the Self-Determination plan without benefit of a Support Broker;
  - j. Not refer themselves as providers of services for individuals for whom they serve as Support Broker.
7. To avoid any real or perceived conflict of interest, the Support Broker shall not refer the individual or his or her legal guardian to any supports provided by any agency which employs the Support Broker or with whom the Support Broker is under contract. The individual or his or her legal guardian may apply for a Waiver of Support Broker Service to the Regional Administrator if the Support Broker provides a support required by a Self-Determination plan to the

individual or his or her legal guardian that would not be otherwise available in the area where the individual resides.

Suggested guidelines for the responsibilities to be assigned to the Support Brokers appear in Section VI.

**B. Development And Approval of Self-Determination Plan and Budget**

1. The individual or his or legal guardian and Support Broker must develop a Self-Determination plan that meets the requirements of this circular. The Self-Determination plan shall contain a budget that is reasonable to meet those needs. Resources from the Division must be within established guidelines. Each Self-Determination plan shall be authorized for a twelve-month period and must be resubmitted for approval no less than 60 days prior to the end of the previous budget period.
2. Once the RSDC receives the completed Self-Determination plan, he or she shall contact the individual, or his or her legal guardian, Support Broker, case manager and interested family members and schedule the Self-Determination Plan Review Team meeting. The annual Self-Determination Plan Review Meeting constitutes an IHP meeting and the case manager attends and participates in this review.
3. Self-Determination plans may be renewed annually without a full Plan Review Team Meeting. The RSDC and the case manager will determine if a meeting is needed.
4. After the team reviews and accepts the Self-Determination plan, it shall be submitted to the RAD for final approval.
5. A Self-Determination plan shall not be deemed approved until final approval is obtained from the RAD.
6. The RSDC, on behalf of the RAD, shall notify the individual, his or her legal guardian, case manager and Support Broker of final approval and confirm in writing the total costs approved and the time period of the Self-Determination plan.
7. The Division shall send a copy of the approved Self-Determination plan to the Fiscal Intermediary.

C. Fiscal Intermediary Services

1. Upon receipt of the individual's approved Self-Determination plan, the Fiscal Intermediary shall send the individual or his or her legal guardian all of the necessary forms, mailing labels and billing stickers needed for the Fiscal Intermediary to pay for the supports and services outlined in the Self-Determination plan. Detailed instructions on how to submit bills to the Fiscal Intermediary will be included in the package of materials.
2. If the individual's approved Self-Determination plan indicates that he/she will be hiring his/her own Direct Support Professional(s) directly, the Fiscal Intermediary shall serve as the employer of record. The Fiscal Intermediary shall send the individual or his or her legal guardian application packages for hiring Direct Support Professionals. The Fiscal Intermediary shall conduct criminal background checks for all Direct Support Professionals who are not affiliated with an agency.
3. To avoid any real or perceived conflict of interest, the Fiscal Intermediary shall not be a provider of direct supports and services for any individual in Self-Determination.

D. Disapproval of Self-Determination Plan and Budget

1. A Self-Determination plan shall be disapproved for any reason contained in Section IV of this circular.
2. Disapproved Self-Determination plans may be revised and resubmitted until the Self-Determination plan is approved but the time period to resubmit shall end one year after the first written notice of disapproval.

E. Waivers to Allowable Cost Guidelines

1. Requests for waivers to specific allowable costs guidelines may be submitted to the RAD through the RSDC by the individual, his or her legal guardian or support broker. The request shall be in writing and shall

- a. Set forth all reasons why the specific line item(s) of the budget should be allowed to exceed the established limits.
    - b. Provide all documents which support the waiver request.
  2. The RAD shall only grant a waiver if the waiver establishes extraordinary circumstances that require a specific line item(s) of the budget to exceed the amount established in the most current Allowable Costs Guidelines. To establish extraordinary circumstances, the waiver request must demonstrate that the individual's basic need requirements for food, clothing, shelter, personal care and/or supervision, require additional funding.
  3. The RAD shall render his or her written determination within 10 working days of receipt of the request for a waiver and shall notify the individual or his or her guardian, case manager, Support Broker, and RSDC.
  4. If a waiver is not granted, the individual or his or her legal guardian or Support Broker may submit a revised budget.
  5. If an individual's monthly recurring household expenses exceeded the Allowable Cost Guidelines as of December 1, 2003, he or she will not be required to submit a waiver.
- F. Budget Modifications-Approved Self-Determination plans may be modified. All budget modification requests shall be made on a form provided by the Division.
1. Budget modifications requesting additional funds must be for emergencies only and will require RAD approval.
  2. All budget modifications requested by an individual, or his or her legal guardian or Support Broker shall be coordinated by the RSDC through a budget modification form. Budget modifications may transfer funds between line items of the budget. A maximum of four budget modifications may be submitted for approval during the individual's Self-Determination plan year.

G. Annual Review

1. Renewal of a Self-Determination plan requires the same documents as the initial Self-Determination plan.
2. The renewal Self-Determination plan shall be submitted to the RSDC no less than 60 days prior to expiration of the existing Self-Determination plan.
3. If the renewal Self-Determination plan is not submitted prior to the expiration date, the most recently expired Self-Determination plan (minus all budget modifications that may have been approved throughout the year) shall be renewed.

**VII. SUGGESTED GUIDELINES FOR DEVELOPING A WRITTEN CONTRACT BETWEEN A PARTICIPANT AND SUPPORT BROKER:**

1. The individual and/or his or her legal guardian should evaluate the ability of the Support Broker to carry out the Self-Determination plan in light of the Support Broker's workload, expertise, training and geographic location to the consumer. Any changes in the Support Broker's geographic location should be disclosed to the Self-Determination participant and their family.
2. Any agreements between a participant and the participant's chosen Support Broker shall be delineated in a written contract. Support Broker contracts should be developed based on the unique needs and desires of the Self-Determination participant and their family, i.e. frequency of telephone contacts and visits.

Suggested responsibilities that should be included in the contract are as follows:

- a. Maintaining the confidentiality of an individual's protected health information.
- b. Developing and coordinating the individual's Self-Determination plan.
- c. Submitting a Self-Determination plan to the Division for approval.
- d. Attending the IHP and the Self-Determination plan review meeting.
- e. Implementing the Self-Determination plan, which includes but is not limited to negotiating prices,

- developing and issuing contracts or agreements with providers of goods and services and sending copies of the contracts and agreements to the Fiscal Intermediary.
- f. Developing a job description for a Direct Support Professional where needed and assisting the individual or his or her legal guardian in the recruiting, interviewing, training, discharging processes.
- g. Visiting the individual at least quarterly and contacting the individual or his or her legal guardian and his or her case manager at least once a month.
- h. Advocating for the individual in the implementation of the services outlined in the Self-Determination plan.
- i. Advising case managers on issues such as a change in the services outlined in the Self-Determination plan, the individual's health, in service providers, or on any unusual incidents that may have occurred.
- j. Preparing budget modifications.
- k. Monitoring the budget to ensure against overspending in individual line items and taking corrective action as needed.
- l. Monitoring and ensuring the quality of service delivery.
- m. Including any other issues important to individual's needs in the contract.
- n. Arranging for his/her own personal criminal background check.

## **VIII. REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS**

Direct Support Professionals are employed by the Fiscal Intermediary or provider agency. Direct Support Professionals shall:

- a. Be at least 18 years old with the ability to meet the needs identified in the written job description;
- b. Be subject to a criminal background check;
- c. Be subject to a drug and alcohol screening;
- d. Possess a valid driver's license, if driving is required by the Self-Determination plan;
- e. Provide a copy of his or her driver's record, if driving is required;
- f. Provide 2 references from his or her most recent employers, internships or supervised volunteer experience;

- g. Attend a mandatory orientation approved by the Division;
- h. Complete any additional training required by the individual or his or her legal guardian; and
- i. Not be a Division employee.

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Carol Grant  
Acting Director